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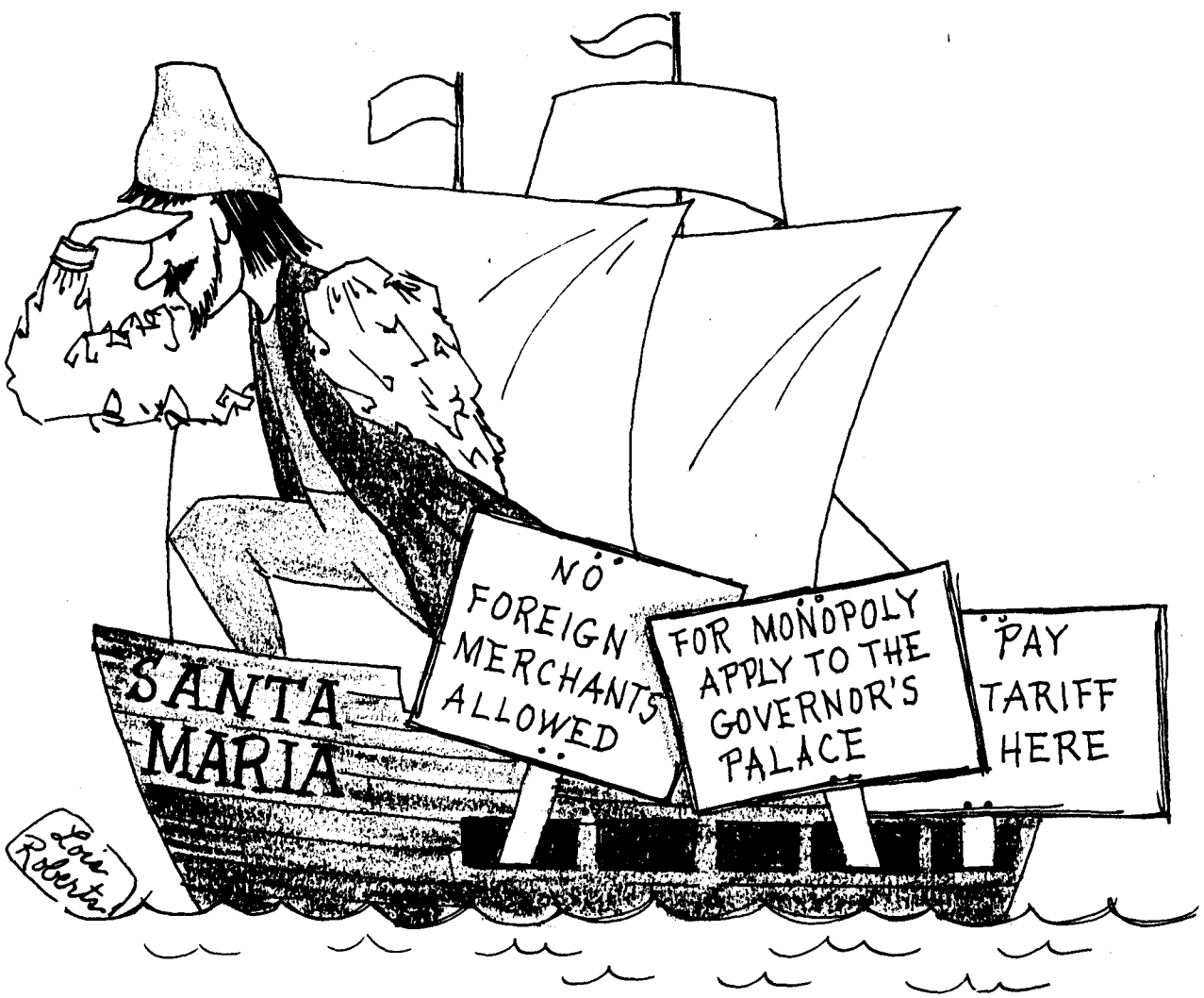
VIEWS



WAS FREE ENTERPRISE EVER FREE?

PART I -- MERCANTILISM IN THE LAND OF COLUMBUS

No country in the world has had a history of political and economic freedom to equal that of the United States. America's folklore, traditions, and heritage are centered around an inspired story of individualism, courage, self-reliance, and private initiative, combined with generous

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quantities of hard work--a story peopled with folk and real heroes, working for political liberty and economic profit and achievement.

Yet, in spite of this economic tradition of capitalism and free enterprise, the ideals of laissez-faire capitalism today are under constant attack as an impractical economic system. Those who argue against it maintain that laissez-faire capitalism was given a chance to prove itself in the early days of U.S. history, and it failed.

But, was free enterprise ever really free? Or could the failures attributed to capitalism actually have resulted from the fact that the Founding Fathers held two opposing economic philosophies and they attempted to reconcile them in the Constitution? The economic system of the United States after 1789 was, in fact, affected by laws blending two approaches, mercantilism and laissez-faire.

The story of American capitalism had its beginning in Europe. The colonists who crossed the Atlantic to the New World came with a heritage that was marked by tyranny and persecution. They had lived under (and many wanted to escape) the chains of autocratic governments, extensive economic regulations, the remnants of feudalism in social and economic life, taxation and tariffs, widespread unemployment, warfare, and religious persecution. What many colonists sought was a greater measure of political freedom and economic opportunity. Many years would pass before they achieved it.

The conditions in Europe which the colonists were fleeing from were an outgrowth of the medieval period, a time in which the economic theory of "just" price prevailed. This theory was based on the idea that market commodities have an inherent, absolute economic value, bearing no necessary relationship to supply and demand or the wishes of sellers and purchasers. Since producers and consumers were not considered capable of arriving at fair market prices freely, there was extensive government regulation of trade and industry.

The idea of "just" price was the precursor of the "Mercantile System," the set of ideas that dominated European economic thought from the sixteenth to the latter part of the eighteenth centuries.

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Mercantilism was the primary, immediate heritage of the colonists who settled in Jamestown and Plymouth. This economic approach embodied the doctrine knownas "state-making." The object of mercantilism was to increase the power of the nation, primarily by increasing its wealth and economic resources. Political despotism was the instrument necessary for putting mercantilist theories into practice. Powerful monarchs and merchant princes turned toward foreign trade to build national strength and colonial empires--both necessary for survival in the almost constant warfare that marked the national rivalries of the time. Mercantilists advocated the following ideas:

1) A nation must acquire an accumulation of wealth in the form of precious metals (bullion and treasure). Mercantilists believed that money was a more desirable form of wealth than other commodities.

2) Foreign trade is preferable to domestic industry because it provides the best means of acquiring money, the desired kind of wealth. Those manufacturing interests which employed shipping or were of high specie value, therefore, were encouraged by the government.

3) Foreign trade is successful only as long as there is a favorable "balance of trade." That is, there must be an excess in the value of exports over imports.

In practice mercantilism was accompanied by a multitude of state regulations of commerce and industry, so that industries were encouraged according to their ability to foster the national interests of the country. These interests, of course, were determined by the king and his government advisers, not by individual businessmen. Since the medieval theory of inherent economic value was still prevalent, controls of production, consumption and prices was still common.

Regulations included navigation laws, control of interest rates, taxes of various sorts, the granting of trading monopolies, prohibitions against the export of money, development of a merchant marine (to provide native shipping for trade and a navy during wartime), regulation of imports and exports, tariffs to protect home industry, and measures to support and increase a domestic labor force (such as naturalization laws and measures to encourage agriculture). All of these regulations were

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intended to produce a country which was economically self-sufficient in foodstuffs, raw materials, and manufacturing (in the event of war) and still capable of producing enough domestic products to carry on a vigorous overseas trade.

Finally, the objective common to all mercantilist countries was colonial imperialism. The thirteen original colonies of the United States formed a crucial part of England's mercantilist empire. European countries looked to colonies as sources of precious metals, natural resources and cheap manufactured products; as markets for home manufactures; as sources of vital supplements to the merchant marine (through control of colonial trade and shipping); and as outlets for surplus population.

In practice, the colonial ventures of mercantilist countries varied greatly. The Spanish government directly supplied the funds necessary for colonization and exercised authoritarian control. In France and Holland, intermediary trading companies (closely allied to the government) were used. French companies, in particular, received large grants of money. The English colonial empire was left almost entirely to private enterprise, in the form of trading companies (such as the Plymouth Company and the London Company, organized as joint stock companies) or proprietors who were given large grants of land by the king. Even though privately owned, however, English trading companies (particularly in later charters) received protection from the government. They were granted monopolies of trade in certain areas (thus competition was eliminated) and they were given powers of government over the settlements they supervised.

The early English colonists in America learned their first lessons about the value of economic freedom in their first two attempts at colonization. The Virginia colony was settled under a socialistic arrangement, under which colonists pooled the products of their labor and received necessities in return. Lacking the incentive of private property, they were often inefficient and lazy. There was a marked improvement when each colonist was given 30 acres to cultivate and the right to retain whatever he produced. Communal organization was also tried at Plymouth, leading Governor William Bradford to state: "For the yong-men that were most able and fitte for labor and service did repine that they should spend their time and streingth to work for other mens wives and children, with out any recompense....And for mens wives to be commanded to doe service for other men, as dressing their meate,

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washing their cloaths, etc., they deemed it a kind of slaverie, neither could many husbands well brooke it." The colonists survived a period of starvation at Plymouth with Indian help and with the eventual abandonment of this system in favor of individual land ownership.

Property rights gradually became one of the hallmarks of the American colonies, even though remnants of feudal ideas of land tenure were a significant part of the mercantilist theory. Feudal ideas were put into effect in the earliest colonial settlements. The Spanish made serfs of the Indians. The French established large private estates on which tenants paid quitrents, worked for the landlord a specified number of days each year, patronized his grist mill, etc. The Dutch established large estates on which proprietors, known as patroons, had exclusive trading privileges (at the expense of their tenants), held manorial courts, monopolized certain types of manufacturing, etc. British proprietors tried to exact feudal dues and quitrents, often in the hope of gaining feudal wealth and power. Some colonies used a system of headrights, whereby a person bringing over a settler to the colony was given a grant of land subject to a quitrent. The Southern colonies kept alive the system of primogeniture, under which the eldest son of a landowner legally must inherit all landed property.

Eventually, all of these feudal schemes failed in America. Men who braved frontier life demanded ownership of land. Land was plentiful and labor was scarce. The competition among colonies to obtain settlers and skilled laborers used the one item that eventually could almost be had for the taking: land. Proprietors who charged heavy feudal dues drove settlers to other colonies or to the unoccupied frontier. In addition, both the proprietor and the Crown were too distant for systems of rent collection to be tightly controlled. Rent law and laws governing the amount of land one person could own were generally evaded.

The growth of colonial agriculture (the major economic activity in the seventeenth and eighteenth centuries) was influenced by both colonial governments and the British government. Mercantilist politicians looked to the colonies to supply those things which England did not produce, but which she wanted or needed. For example, this included tropical and semitropical products which would help the mother country achieve the self-sufficiency it desired. Some of the colonies' most uneconomic

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agricultural experiments were the direct result of artificial stimulation in the form of bounties of money from Great Britain. The fiasco of the attempt to grow coffee, cotton and olives in New England is a case in point. Similarly, the colonies themselves passed laws requiring the production of certain products, such as the laws in Virginia and Georgia requiring the planting of mulberry trees--to fulfill England's desire for silk. Indigo production in the South was almost entirely a venture supported by British bounties. It did not take the colonists long to realize, however, that many of England's desires for products were ridiculously unprofitable because of climatic conditions, scarcity of necessary labor, or the like. They soon turned their productive efforts toward suitable agricultural products for home consumption or for trading.

Colonial governments regulated or subsidized enterprises in a number of other ways. For example, there were prohibitions against the export of sheep, special pasture rights for wool-raising and tax exemptions for sheep in New England colonies and towns. A number of colonies forbade the export of iron and hides. Virginia required the establishment of a tannery at public expense in every county. There were bounties for the production of hemp, flax, linen, silk, duck, shipbuilding, salt, tar and wine. Land grants, monopolies and loans without security were common for favored products. Finally, in New England, personal daily life was regulated by the elaborate code of Puritan blue laws, remnants of which survive to this day.

The colonial period was predominantly agricultural, but manufacturing interests grew slowly. They grew in spite of limited markets, a scarcity of skilled labor, high labor costs, poor communications, high costs of transportation, poor purchasing power of settlers, and scarcity of available capital, particularly specie. Here, again, both Great Britain and the colonies aided and restricted manufacturers in an effort to stimulate industry or to fulfill the ideals of mercantilism. Sometimes the governments in the two countries worked at cross purposes. England would instruct its royal colonial governors to legally restrict the development of colonial manufacturing, while the Colonies themselves would try to stimulate its growth.

Colonial regulations were primarily intended to stimulate infant industry and to induce people to emigrate from Europe. For example, there were laws that attempted to compel skilled craftsmen (or freed indentured servants) to follow their craft instead of turning to farming. The appeal

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of farming was the ease with which colonists could usually acquire personal ownership of land. (Land must have been a powerful incentive to colonists who had emigrated from Europe, where they could never have hoped to enjoy the right to privately own 50 acres of property.) Sometimes there were laws exempting certain classes of workers from taxes. Apprenticeship training was also regulated to encourage the development of a skilled labor force. Land grants, bounties, public loans or lotteries were used to attract manufacturing interests. Raw materials were exempted from taxation or were subject to high export duties. Colonial governments sometimes conferred monopolies on plants they deemed to be in the public interest. Local industries were also protected by import duties on foreign manufactured items, even though the aim of such tariffs was usually to obtain revenue to finance the local government. In addition, rates for grinding grain were regulated, millstones and shipbuilding were inspected, the weight and quality of certain products were regulated (flour, bread, beer, meats), not to mention inspections of barrels of pork, tobacco and potash.

British intervention in the field of manufacturing took the form of laws restricting certain colonial manufactures (for example, wool, which British manufacturers specialized in) or forbidding certain exports between colonies or to foreign ports. In 1750 an act prohibited many types of steel production in the colonies, thereby offering an artificial stimulus to the production of iron. England also restricted the emigration of her skilled labor force and prohibited the export of industrial machines from the mother country. In addition, many products which the colonies exported to England were saddled with high tariffs.

The British Navigation Acts (passed between 1651 and 1663) were sometimes intended to stimulate colonial industry in the interests of building Great Britain's wealth and power. They included provisions which favored colonial-built trading vessels; thus the shipbuilding industry grew rapidly until almost one-third of British shipping was carried on in ships that were built in the colonies. In addition, England gave bounties to colonists who produced naval stores, such as hemp, masts, pitch, tar, spars, etc. An act of 1660 required that the colonists trade certain goods only with England, among them the foregoing naval stores. The Navigation Act of 1663 required that all European goods in transit to the colonies must first pass through England.

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Despite British restrictions, the colonists developed a thriving trade with the West Indies (molasses and coin), Africa (slaves), Southern Europe (wine and fruit taken to England), and England (manufactured goods). Slavery played an important role in mercantilist theories as well as in Southern agriculture. The British government, for example, overruled attempts of some Southern legislatures to reduce the slave trade, because the plantation system brought profitable benefits to commercial and shipping interests in England. This was during a period when each colony had its own established church, and it is worth mentioning in this connection that the New England Puritans were one of the most active groups carrying on the slave trade. The Quakers were the only religious group to take a stand against it. Human slavery, the greatest blemish on U.S. history, thrived under a system which combined the forces of church and state. Both the power of the church and the uneconomic institution of slavery were doomed to die under capitalism.

In addition to agriculture and manufacturing, the labor force was also regulated, as I have already indicated. There were early attempts to regulate wages in the colonies (to keep them low), but efforts to fix wages were rare and usually without effect. The labor force was in great demand and was reasonably mobile so that a worker could easily threaten to leave a colony that proposed to fix his income. As Professor Chester W. Wright points out, "The fact that economic conditions in the colonies made it impossible to develop any system of effective restrictions was an important factor in keeping up the wages and improving the condition of laborers." (Economic History of the United States, 1941) Working men, however, were affected by the widespread practice of price-fixing. The prices of some commodities (for example, bread) were fixed, as well as the prices for certain services (mills, inns and ferries). Price-fixing, in effect, was the same as wage-fixing, because it affected the incomes of independent businessmen--the same businessmen who hired and paid workers salaries that were kept artificially low, because gross income was kept lower than the free market would bear. It is not surprising that America's first labor strikes, held in the seventeenth century, were strikes by laborers and independent craftsmen against government price-fixing. In addition, workers were affected by regulation of skilled apprentices; these controls were often detrimental to less skilled workers (much of the time this was their intent).

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Internal colonial trade and marketing were also regulated by the colonies. Customs duties were imposed by one colony against the imports of a neighbor, as well as tonnage duties (taxes levied according to tonnage on ships entering a port). The latter were extremely common and were used to finance colonial defense and lighthouse services. Import duties were one of the primary means of financing local governments; export duties were of less importance and were not prevalent after 1750, except in Maryland and Virginia where there was an export duty on tobacco (sold in great quantities to Great Britain). Import duties were occasionally used for ethical reasons--to discourage the importation of slaves and the consumption of rum. In addition, virtually all the colonies had inspection laws to prevent the sale of inferior grades of products.

The array of legislation that mercantilism gave birth to is indeed overpowering. It comes as no shock that mercantilism (particularly the French variety) is sometimes referred to as the "Restrictive System". To an observer today, the colonists seem to have been hemmed in on all sides by economic controls, on paper at least. One immediately becomes curious about their transition to the advocacy of laissez-faire and greater economic freedom. It is important to remember that the spirit of individualism grew in a scattered population where people had to fend for themselves in self-sufficient household economies, usually on farms. Despite the economic regulations (far fewer than exist in the United States today) competition was fairly free. Large merchants, for example, were free to pursue trading ventures in which they combined simultaneously the functions of wholesalers, retailers, exporters, importers, bankers, insurance agents and shipowners. In addition, the colonists chose to rely on private initiative for supplying most of their economic needs and wants, with the exception of the beginnings of state-supported education, roads and bridges, and the postal and lighthouse services.

An understanding of the growth of economic freedom in America also requires looking behind the scenes at colonial life itself. Here one sees that Yankee ingenuity and Yankee independence often led to a considerable amount of Yankee disobedience, particularly with reference to the laws imposed on commerce by Great Britain. The period prior to 1750 is known by some historians as the era of Britain's "salutary neglect" of the colonies. Laws were not enforced rigorously and Britain stood by while the colonists developed a political system based on strong local governments. In short, the colonists disobeyed the laws whenever it was to their economic advantage. (For example, the Hat Act of 1732 prohibiting the export of hats from the colonies was usually ignored.) In fact, the colonists were generally annoyed even by those laws that were

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not enforced. The Crown was so far removed from America that the costs of an elaborate enforcement mechanism would have far outweighed the gains of restrictive legislation. Smuggling was widespread and Britain's attempt to curtail it in 1763 was a major factor in arousing the antagonism that eventually led to the Revolution.

The colonists disobeyed local colonial laws too. Workers were able to disobey with impunity laws that fixed wages, for example, because the government knew that they could always acquire land, turn to farming or move away to an area where they could be independent. Apprentices frequently ran away to other colonies. The abundant supply of easily available land was one of the most important factors contributing to economic independence, the spirit of freedom and the growing protection of property rights. Even when land rents were very low, the colonists were irritated. Frontier life had encouraged a spirit of strong individualism that rebelled against oppressive authority.

The colonists were also noted for their widespread opposition to direct taxation. Wealthy people naturally opposed it because they did not wish to part with the wealth they had produced. Backwoodsmen opposed it for the same reason, but also because they were too far removed from populated areas to see what the tax money was used for, and because their interests were frequently neglected. Colonial taxes included poll taxes, internal revenue taxes on wines and liquors, imports and export duties, general property taxes, and the faculty tax. The faculty tax was similar to an income tax, imposed on laborers, artisans and tradesmen; it was based on the amount of earnings of each group. Property taxes were levied according to the amount of wealth possessed, but they were not progressive; the same <u>rate</u> was imposed regardless of the <u>quantity</u> of wealth. The Revolutionary cries of "no taxation without representation" were cries which really might have been abbreviated to "no taxes."

The growth of political and economic freedom in the colonies was also affected by the experiences which the colonists were gaining in developing the skills and institutions of self-government. For example, as colonies grew large, they often set up representative forms of government. Local assemblies, even when governed by royal officials appointed by the Crown, were able to protect themselves by maintaining control over colonial revenue (including the salaries of royal governors in some cases). Although the franchise was by no means universal, some colonists, at least, were exercising the right to vote.

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After 1763 Great Britain decided to clamp down on the colonies; mercantilist regulations were increased in an effort to enhance British shipping and to keep the energetic colonies in a subservient economic position. In 1763 a royal decree forbade settlement of lands (or colonial grants of land) west of the Allegheny Mountains. In view of what we have already learned about the colonists' attitudes toward land, it is easy to surmise their reaction to this law. Shortly thereafter came the infamous Stamp Act, Sugar Act and Townshend Acts, all of which involved taxes. In addition, Great Britain decided to maintain a standing army of 10,000 men in the colonies--at the colonists' expense. Although most of the new taxes were repealed or reduced, the antagonism and protests in the colonies eventually led to the Declaration of Independence and war with England.

The immediate results of the Revolution were the destruction of quitrents and primogeniture, and the formation of new state constitutions, all of which placed greater emphasis on economic and political freedom. The state constitutions moved to separate church and state; some abolished slavery or restricted the amount of the slave trade; almost all vested a great amount of authority in elected legislatures (as opposed to the executive or judicial authorities). In 1781, the first constitution of the United States, the Articles of Confederation, was ratified by the colonies.

Conditions under the Confederation were extremely difficult for a new nation that lacked political unity, and that was in the throes of an economic depression. Hatred and fear of taxation had led the states and the Continental Congress to issue a great deal of paper money (Continental currency) to finance the Revolution, but this money had depreciated in value to the point of being "not worth a Continental." Immediately after the war, the high, inflationary wartime prices took a rapid drop, and there was a necessary readjustment to the loss of the large wartime demand for goods. In addition, the newly independent nation had to adjust to a foreign trade that was no longer aided and protected by mercantilism. In fact, trade was now seriously restricted by the exclusive, mercantilist policies of Britain and the other nations of Europe. In addition, peace brought a flood of British imported manufactures that seriously threatened American industries and drew specie out of the country. (Scarcity of coins had been a continuing problem for the colonies.)

The new nation struggled to regain prosperity during the period prior to the Philadelphia Convention in 1787 that produced the U.S. Constitution.

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The economic trends of this period had a marked effect on the future. Because of the difficulties of competition with the trading empires of Europe, demands arose for import duties to protect infant industries, as well as for state revenue. Massachusetts began to levy such duties in 1784 and several other colonies, particularly those with strong manufacturing and commercial interests, followed suit. In addition, states commonly provided bounties and tax exemptions for manufacturers after 1785.

Secondly, in a true mercantilist manner, most states passed navigation laws that aided shipbuilding interests and the American merchant marine. For example, laws placed higher duties on goods imported in foreign ships than on those imported in American ships. Colonial tonnage duties were increased for foreign ships. These various duties applied to foreign goods (and occasionally even American goods) imported from other states or other countries. Needless to say, friction among the states resulted.

Wartime inflation was replaced by peacetime inflation under the Articles of Confederation. There were additional issues of paper money by the states. Debtors agitated for paper money because they benefited enormously from it: they paid their debts in depreciated money that frequently was worth only a fraction of the amount originally borrowed. The period was even sometimes marked by open violence, as riots occurred when state legislatures refused to issue more paper money. States were still reluctant to levy taxes; even though laws to this effect began about 1777, enforcement was lax and prior to 1781 little revenue was received.

Things were indeed bleak when the framers of the U. S. Constitution met in 1787. They represented states that had an abundance of mercantilist ideas and laws, carried over from the colonial period. At the same time, they represented a population that was eager to throw off the political and social restraints of the earlier period--eager for freedom and equality. They had just fought a war to escape the regulations and taxation of British mercantilism.

As we look back on it, the great drama of history in 1787 now seems to center around the question: Which way would the delegates lean, toward provisions which would result in a greater economic freedom or toward the establishment of the familiar mercantilism? The eighteenth century had

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given birth to economic ideas in Europe that would influence the outcome. Mercantilism, dominant since the days of Columbus, had an emerging rival--the laissez-faire doctrine. In a future issue we will analyze what happened when this new opponent arrived in the land of Columbus.

--Joyce F. Jones

* * * * *

HEADS I WIN, TAILS YOU LOSE

There is a civil case whose judgment is pending before the Federal District Court in the Southern District of New York which is potentially of enormous direct importance to almost every young man in the country, and which has as yet received very little notice.

The plaintiffs, Howard S. Katz and David A. Baumann, are suing the government in order to enjoin it from enforcing the Universal Military Training and Service Act. Their lawyer, Henry Mark Holzer, claims that this Act is unconstitutional, and is asking Judge Harold R. Tyler, Jr., to convene an immediate three-Judge court, to rule on the constitutionality of the draft.

"Which provision of the Universal Military Training and Service Act are you seeking to have declared unconstitutional?" began Judge Tyler at the hearing on July 12, 1966. Then, obviously in disbelief: "The entire Act?"

If Katz and Baumann succeed in their goal, of course, the advantage to the hundreds of thousands of young men who now have the shadow of forced military conscription hanging over their heads is obvious.

But the way in which the government is moving to counter this suit has implications for the future of those same young men which are not so pleasant. The government's first move, which is now part of what Judge Tyler is considering before he renders judgment, is to have the case excluded from court on technical grounds.

The two technical questions which the government is raising are the questions of whether or not the case meets the requirements for federal jurisdiction, and whether or not the plaintiffs have what is called "standing to sue."

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The first question, that of federal jurisdiction, will be answered in the affirmative if it is established that a federal question has been raised and if the matter in controversy exceeds "the sum or value of $10,000." It is this latter point which the government is questioning. What the government is implying is that the liberty and potentially the life of a young United States citizen is not worth more than $10,000. Since under the law plaintiffs may not do what is called "aggregate their grievances" (that is, if it is decided that Mr. Katz's life is worth $5,000 and Mr. Baumann's life is worth $5,000 they cannot get into Federal court by adding together the sums allegedly at stake), this means that the government is trying to claim that on these grounds no possible combination of defendants could meet the $10,000 requirement.

On the second question, that of standing, the government is trying to claim an interesting point, too. They claim that the suit of plaintiff Katz is "premature," since he has not yet been drafted (He's in the National Guard). But they also claim that the suit of plaintiff Baumann has abated (that is, has been terminated), since he has been drafted, subsequent to the filing of the suit.

It is obvious that what the government would most like is a decision which would make it impossible for this kind of suit ever to be brought again; or if not that, which would make it possible to end such annoyances quickly, by inducting the plaintiffs.

PERSUASION would like to bring the existence of this suit, with its extremely grave implications, to the attention of all its readers. We would be grateful if, in turn, our readers would bring to our attention any newspaper or magazine comment they see on the case.

Next month, we will bring you a discussion of the legal and moral principles underlying this suit.

Whichever way Katz v. The United States of America is ultimately decided (and it may take years before it is ultimately decided) the decision will mean that our country has either taken a giant step forward -- or a giant step backward.

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